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JetBlue Airways Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

MARILYN PARVER,

Plaintiff,

vs.

JET BLUE AIRLINES CORPORATION;
CITY OF LAS VEGAS; LAS VEGAS
METROPOLITAN POLICE DEPARTMENT;
OFFICER MAURICE RODRIGUEZ-
GALLAR OF THE CITY OF LAS VEGAS;
OFFICER JOHNATHAN ANKENY OF THE
CITY OF LAS VEGAS; FAWN DOE, OF JET
BLUE AIRLINES FLIGHT NO. 129;
CAPTAIN DOE OF JET BLUE AIRLINES
FLIGHT NO. 129; DISPATCHER DOE OF
JET BLUE AND AGENT DOE, A LAS
VEGAS AIRPORT AGENT OF JET BLUE
AIRPORT AGENT,

Defendants.

CASE NO. 2:10-CV-01186-GMN-RJJ

**ORDER GRANTING DEFENDANT JETBLUE AIRWAYS CORPORATION'S MOTION
FOR SUMMARY JUDGMENT**

On September 27, 2013, a hearing was held in which this Court considered Defendant JetBlue Airways Corporation's (incorrectly named as Jet Blue Airlines Corporation in caption) Motion for Summary Judgment (Document #40). William Helfand, Esq. appeared on behalf of Plaintiff, Thomas Dillard, Esq. appeared on behalf of Las Vegas Metropolitan Police Department,

1 et al., and Carol Michel, Esq. appeared on behalf of JetBlue Airways Corporation (“JetBlue”).

2 Having carefully considered the facts of this case, the current state of the evidence, all the
3 pleadings and papers on file, including JetBlue’s Motion (Document #40), Plaintiff’s Opposition
4 thereto (Document #46), JetBlue’s Reply (Document #51), both of Plaintiff’s supplemental
5 responses (Documents #54 and 65), both of JetBlue’s Responses to Plaintiff’s supplemental
6 responses (Documents #61 and 68), all submissions of the parties and the oral arguments presented
7 by counsel at the hearing, all of which are expressly incorporated herein,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant JetBlue
9 Airways Corporation’s Motion for Summary Judgment is **GRANTED** in full upon the following
10 findings of fact and conclusions of law:

11 Plaintiff filed suit against JetBlue Airways Corporation (incorrectly named in Complaint)
12 on July 19, 2010 and alleged both federal and state claims for relief. Plaintiff alleged that she was
13 subjected to unreasonable search and seizure and false arrest and imprisonment following an
14 incident on a JetBlue Airways (“JetBlue”) flight from New York to Las Vegas. Plaintiff also
15 alleged that JetBlue and LVMPD violated her constitutional rights under 42 U.S.C. § 1983,
16 committed civil conspiracy, and were negligent.

17 JetBlue moved for summary judgment on all claims alleged against it based on its position
18 that Plaintiff’s state claims are preempted by federal law, there is no evidence that it was acting
19 under color of state law, and there is no evidence of conspiracy between JetBlue and any of the
20 Defendants. Additionally, JetBlue moved for summary judgment as to Plaintiff’s state law claims
21 on grounds that there is no genuine issue of material fact sufficient to support a claim for false
22 arrest or false imprisonment by JetBlue and further that she cannot establish one or more essential
23 elements of her claim for Negligence.

24 Having reviewed and considered the submissions of the parties and heard the argument of
25 counsel, the Court hereby FINDS:

26 JetBlue is a private commercial air carrier that provides daily domestic and international
27 service to the public. On July 26, 2008, Plaintiff boarded JetBlue Flight 195 from John F.
28 Kennedy Airport to McCarran International Airport in Las Vegas. During the flight, an altercation

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1 occurred between two other passengers seated a few rows in front of Plaintiff regarding a crying
2 child. At some point during the dispute, a flight attendant believed she witnessed Plaintiff taking
3 pictures or video of the forward bulkhead area where the cockpit entrance is located during a crew
4 break. JetBlue's flight and cabin crew became concerned regarding the nature of the pictures
5 and/or video. As a result, a flight attendant questioned Plaintiff regarding her pictures; however,
6 Plaintiff refused to cooperate with the flight attendant and engaged in behavior that distracted the
7 flight attendant from her duties. Despite the crew's efforts to resolve the situation, Plaintiff
8 became agitated, disruptive and refused to follow flight attendant instruction. Plaintiff's conduct
9 onboard the flight was interfering with the flight attendant in the performance of her duties aboard
10 the in-flight aircraft. Thus, Plaintiff was given a notice by JetBlue while still on the aircraft that she
11 had violated federal law including Title 14, CFR §91.11, by interfering with a crewmember in the
12 performance of the crewmember's duties aboard an aircraft being operated.

13 The pilot in command of Flight 195 was JetBlue Captain Stephen Matthews. Captain
14 Matthews was informed of the interactions with Plaintiff by the flight attendants. In connection
15 therewith, Captain Matthews conferred with BlueWatch (JetBlue's corporate security entity) and
16 gave instructions to the flight attendant about dealing with Plaintiff. Ultimately, pursuant to the
17 authority vested in him by the Federal Aviation Act part 91.3, the Captain made the decision to
18 send an in-flight alert to Dispatch/Blue Watch requesting that authorities meet the plane upon
19 arrival to sort out the situation.

20 Upon the arrival of Flight 195 at McCarran International Airport, authorities, including
21 uniformed officers of the Las Vegas Metropolitan Police Department, Officers Ankeny and
22 Rodriguez-Gallardo, boarded the plane and a flight attendant identified Plaintiff. There was no
23 discussion between the officers and the flight crew other than that for identification purposes. The
24 officers asked Plaintiff to step off the plane and discuss the incident with them. Plaintiff complied
25 and was escorted to an open area of the terminal where she was questioned regarding the events
26 leading up to that point. At no time did any of the flight attendants touch Plaintiff. Plaintiff
27 identified herself and explained the circumstances involving her use of her digital camera during
28 the flight. The officers then viewed the pictures from the camera viewer. They saw no security

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1 problem with the pictures. Officer Ankeny then explained to her that no criminal act has occurred
2 and the officers were finished with their business. The officers smelled alcohol from her but did
3 not believe it gave rise to a concern due to her intoxication level. Officer Ankeny told her if she
4 had a problem with JetBlue she could take it up with them and their office is in the baggage area.
5 Plaintiff however became upset and she stated she wanted a written report of the whole incident.

6 The officers reiterated to her that there was no crime to report and so no report to write and
7 give to her. They told her she was again free to go and invited her please to do so. Plaintiff did not
8 do so and made adamant demands. Officer Ankeny told her she needed to now leave because she
9 was causing a disturbance, using foul language and attracting the attention of other bystanders. He
10 warned her if she continued her behavior that she would be arrested. Officer Rodriguez-Gallar
11 begged her to leave and told her she did nothing wrong. Plaintiff disregarded the warning,
12 remained loud and told the officers to arrest her because she was not leaving. Officer Ankeny then
13 walked up to her, told her to place her arms behind her back, which she did, and placed her in
14 handcuffs. He took her into custody for failure to follow the Airport rule for disturbing the peace.

15 Officer Ankeny then escorted Plaintiff down the jetbridge and down the stairs to the tarmac
16 where he had parked his assigned police truck. Officer Ankeny drove her to the LVMPD Airport
17 Substation. Officer Ankeny took her inside and had her sit on a bench and secured the cuffs to a
18 hook on the bench. Plaintiff had told Officer Ankeny that her husband was coming to pick her up.
19 Officer Ankeny was then able to make contact with Mr. Michael Parver and directed him to their
20 location. Mr. Parver came to the substation and Officer Ankeny explained to him the situation.
21 Officer Ankeny at that point exercised his discretion to un-arrest her. Plaintiff was then released to
22 the custody of her husband and the two of them left together.

23 Federal Law Field Preemption:

24 The Court finds that the material facts in this case surrounding Plaintiff's actions on JetBlue
25 Flight 195, from which her claims against JetBlue arise, were indisputably an issue of airline flight
26 safety. All of the events alleged against JetBlue occurred while Flight 195 was in the air, while the
27 FAA regulations were the sole and exclusive law governing the parties. The doctrine of federal
28 preemption is grounded in the Supremacy Clause of the United States Constitution. *See U.S.*

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1 Const., Art. VI, cl. 2. Under that clause, Congress has the power to preempt state law, if it so
2 intends. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992). Field preemption
3 occurs when Congress has regulated an area in such a wide-ranging, pervasive way that a court can
4 reasonably infer that Congress intended to occupy this area of law exclusively, and, therefore, state
5 statutory and common law cannot apply. See *Wisconsin Public Intervenor v. Mortier*, 501 U.S.
6 597, 597-98 (1991).

7 The Court in *Montalvo v. Spirit Airlines*, 508 F.3d 464, 468 (9th Cir. 2007), held that
8 federal law generally establishes the applicable standards of care in the field of aviation safety and
9 that Congress intended to occupy the field of aviation safety as evidenced by the FAA's purpose,
10 language, and history surrounding its enactment, as well as accompanying federal regulations. See
11 also *Martin ex rel. Heckman v. Midwest Express Holdings, Inc.*, 555 F.3d 806, 808 (9th Cir. 2009).

12 Plaintiff's actions while aboard the JetBlue flight were regulated exclusively by the FAA
13 regulations because the FAA has pervasively regulated the area of in-flight safety events with
14 specificity. Title 14 of the Code of Federal Regulations, Part 91.3b states that the pilot in
15 command is responsible for and is the "*final authority*" as to an aircraft being operated. Based on
16 this regulation, the pilot is given the ultimate authority to decide how to handle any kind of in-
17 flight disturbances that occur aboard his aircraft, including the decision to alert authorities on the
18 ground. Captain Matthews was acting within his authority under this regulation when he decided
19 to have authorities meet the aircraft upon arrival in Las Vegas.

20 Further, Title 14, CFR Part 91.11 states that "no person may assault, threaten, intimidate, or
21 *interfere* with a crew member in the performance of the crew member's duties aboard an aircraft
22 being operated" (emphasis added). Pursuant to this regulation, which has an obvious relationship
23 to flight safety, any actions by a person that in any way interfere with the flight attendants
24 attending to their assigned duties on-board an aircraft are prohibited. The specific action or
25 legality of the action is immaterial. Plaintiff was clearly violating this regulation when she
26 interfered with the crew aboard JetBlue Flight 195 by being uncooperative and disruptive.

27 These regulations clearly govern all events that occurred during the flight, thus, the Federal
28 Aviation Act is the applicable law in this case, not state law. Because federal law has completely

1 occupied the field, under *Montalvo v. Spirit Airlines*, 508 F.3d 464, 468 (9th Cir. 2007) and *Martin*
2 *ex rel. Heckman v. Midwest Express Holdings, Inc.*, 555 F.3d 806, 808 (9th Cir. 2009), state law is
3 preempted. Therefore, summary judgment is warranted in favor of JetBlue on all state claims
4 alleged by Plaintiff because her conduct violated federal law as noted above. JetBlue's motion for
5 summary judgment is GRANTED.

6 42 U.S.C. § 1983 Claim:

7 To state a viable claim for relief under § 1983, a plaintiff must assert "*both* an alleged
8 constitutional deprivation . . . *and* that 'the party charged with the deprivation [is] a person who
9 may fairly be said to be a state actor.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50
10 (1999)(emphasis in original). For a private party to be considered a state actor, one of three
11 conditions must be met: (1) the state has coerced or at least significantly encouraged the action
12 alleged to violate the Constitution (the state compulsion test); (2) the private party performed a
13 public function that was traditionally the exclusive prerogative of the state (the public function
14 test); or (3) the state had so far insinuated itself into a position of interdependence with the private
15 party that it was a joint participant in the enterprise (the nexus/joint action test). "Merely private
16 conduct, however wrongful or discriminatory, is not actionable under § 1983." *Id.* at 1272.

17 Plaintiff does not allege that JetBlue was representing the State in any governmental
18 capacity or was acting in any way other than as a private company operating its business when it
19 notified the authorities of Plaintiff's actions. Further, private citizens and/or private companies do
20 not transform themselves into state actors simply by alerting the police, filing a police report, or
21 participating in court proceedings.

22 While the Court recognizes Plaintiff's argument that JetBlue was acting under color of state
23 law and in collusion with LVMPD due to the language on the notice she was given stating that her
24 actions could be punishable by law, the Court finds this argument unpersuasive based on the nature
25 of the notice, the lack of evidence of significant interaction between any JetBlue and LVMPD
26 officers and JetBlue operating as a private airline carrier, not associated with the state in any
27 capacity. There is no evidence in this case that JetBlue was acting under color of state law or was
28 in any way a government actor. Therefore, JetBlue's motion for summary judgment as to

1 Plaintiff's 42 U.S.C. § 1983 claim is hereby GRANTED.

2 Conspiracy:

3 An actionable civil conspiracy is a combination of two or more persons who, by some
4 concerted action, intend to accomplish some unlawful objective for the purpose of harming another
5 which results in damage. *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev.
6 1304, 1311, 971 P.2d 1251, 1256 (1998). To prevail in a civil conspiracy action, a plaintiff must
7 prove an agreement between the tortfeasors, whether explicit or tacit. *GES, Inc. v. Corbitt*, 17 Nev.
8 265, 270–71, 21 P.3d 11, 15 (2001). Thus, to establish a claim for civil conspiracy against JetBlue,
9 Plaintiff must prove: (1) the JetBlue crew acted in concert with at least one other party or person,
10 and (2) *intended* to accomplish an unlawful objective for the purpose of harming Plaintiff, which
11 (3) resulted in damages to Plaintiff.

12 Plaintiff has provided no evidence of the factual support for a civil conspiracy claim.
13 Plaintiff did not testify as to, and has provided no evidence to support, an agreement between any
14 JetBlue employee and any other defendant to intentionally act in concert to achieve an unlawful
15 objective that resulted in damages to Plaintiff. Further, there is no evidence that proves that any
16 JetBlue crew member or employee had any intent to injure Plaintiff. Consequently, there are no
17 genuine issues of material fact showing that there was any kind of conspiracy between a JetBlue
18 employee and any other defendant, thus, JetBlue's Motion for summary judgment on Plaintiff's
19 civil conspiracy claim is GRANTED.

20 False Imprisonment:

21 In regard to Plaintiff's false imprisonment and false arrest claims, the Court notes that there
22 was no physical contact between any JetBlue employee and Plaintiff and Plaintiff was never
23 restrained by JetBlue. At no point in time did JetBlue ever intentionally force Plaintiff to remain
24 on the aircraft against her will. Once Plaintiff was escorted off the aircraft by the police officers,
25 she was under the direction and control of the Las Vegas Metropolitan Police not JetBlue. Further,
26 Plaintiff's later being taken into custody was based purely on her refusal to leave the airport as
27 instructed by the Las Vegas Metropolitan Police, not any factor involving JetBlue. There are no
28 genuine issues of material fact as to Plaintiff's false arrest and false imprisonment claims against

1 JetBlue, therefore, JetBlue's motion is GRANTED and those claims are summarily dismissed in
2 favor of JetBlue.

3 Negligence:

4 Summary judgment is also warranted for Plaintiff's negligence claim against JetBlue on the
5 grounds that Plaintiff cannot establish one or more essential elements of her claim. Plaintiff cannot
6 show a duty to her was breached inasmuch as the duty owed in this instance is that governed by the
7 FAA which this Court has already found preempted the field for claims of this nature. Further,
8 Plaintiff cannot show any injury in support of her negligence claim because there is no evidence
9 she was ever touched by JetBlue and any alleged mental distress unaccompanied by a touching is
10 of insufficient severity to support the claim.

11 The Court having found in JetBlue's favor as to all claims, the Court directs that Summary
12 Judgment be entered in favor of JetBlue and Plaintiff's complaint be dismissed as to JetBlue.

13 **IT IS SO ORDERED** this 17th day of October, 2013

14 
15 _____
16 Gloria M. Navarro
17 United States District Judge

18 Submitted by:

19 /s/ Carol P. Michel
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